



American Association of
State Highway and
Transportation Officials

April 29, 1999

Dan Flowers, President
Director
Arkansas State Highway
and Transportation Department

John C. Horsley
Executive Director

Ex Parte

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

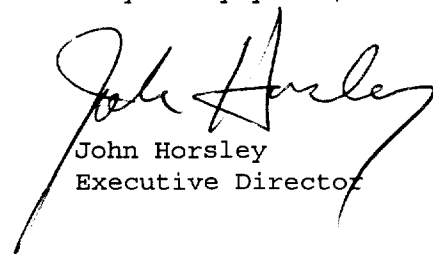
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket 98-1: In the Matter of The Petition of the State of Minnesota, Acting by and Through the Minnesota Department of Transportation and the Minnesota Department of Administration, for a Declaratory Ruling Regarding the Effect of Sections 253 (a), (b) and (c) of the Telecommunications Act of 1996 on an Agreement to Install Fiber Optic Wholesale Transport Capacity in State Freeway Right-of-Way

At its regularly scheduled meeting held in Little Rock, Arkansas, on April 19, the AASHTO Board of Directors unanimously approved PR-3-99, attached. Prior to its consideration by the Board, this resolution was recommended without dissent by the AASHTO Standing Committee on Highway Traffic Safety and the AASHTO Standing Committee on Highways.

If you have any questions on this matter, please direct them to Deputy Executive Director David J. Hensing at 202-624-5812, or by e-mail at dhensing@aaashto.org.

Very truly yours,


John Horsley
Executive Director

JH:DJH:rgc

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Approved by the Board of Directors
on April 19, 1999

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POLICY RESOLUTION PR-3-99

Title: Reaffirming the Authority of State and Local Governments to
Safely Manage the Public Rights-of-Way

Federal Communications Commission
Office of Secretary

WHEREAS, the U.S. Congress passed the Telecommunications Act of 1996 (TCA), 47 USC 151 et. seq., which provided for the deregulation of the telecommunication industry, with the goal of creating competition in the provision of telecommunication services; and

WHEREAS, both AASHTO and the Federal Highway Administration have had policies extending back some five decades opposing the longitudinal use of freeway rights-of-way for utilities; and

WHEREAS, buried fiber optics cable can be installed with minimal disturbance of existing traffic, require infrequent access for maintenance purposes, can usually be sited to even further minimize disruption or hazard to vehicular freeway users, and the optic technology these cables support can be used to permit and enhance safety and operational efficiency through Intelligent Transportation System (ITS) services; and

WHEREAS, the failure or disturbance of fiber optics cable does not create hazard, damage, or disruption to the normal intended operations within and along the right-of-way; and

WHEREAS, for reasons cited above and other reasons the AASHTO Board of Directors approved Policy Resolution PR-21-95, "Installation of Fiber Optic Facilities on Highway and Freeway Rights-of-Way," which finds that there is a "distinction between – fiber optic cables and other types of utilities, wherein it is deemed permissible to permit the longitudinal use of freeway rights-of-way for the former while retaining existing policy in opposition to the longitudinal use of freeway rights-of-way for other utility types"; and

WHEREAS, the TCA in Section 253 (b) states that "Nothing in this section shall affect the ability of a State to impose . . . requirements necessary to . . . protect the public safety and welfare . . ."; and

WHEREAS, the Federal Communications Commission (FCC) is currently considering a declaratory ruling which could potentially negatively affect the ability of states and municipalities to manage public rights-of-way as provided in Section 253; and

WHEREAS, there is litigation underway in both state and federal courts in which telecommunications companies and/or their agents, as plaintiffs, have attempted to seek rulings which would effectively enable access by telecommunications companies to these public rights-of-way in a virtually unfettered manner; and

WHEREAS, adverse rulings from the FCC or the courts that would require the states and municipalities to permit the opening of trenches on freeway rights-of-way at intervals more frequent than they deem safe could lead to decisions by some of these entities to disallow any placement of fiber optics on freeways.

NOW, THEREFORE, BE IT RESOLVED that the AASHTO Board of Directors hereby reaffirms its position that states and municipalities have the duty to safely and prudently manage public rights-of-way in conformance with Sec. 253, and that this duty should extend to controlling the frequency, duration and other conditions of access as deemed necessary to protect the public safety and welfare; and

BE IT FURTHER RESOLVED, that this resolution should be delivered to the appropriate officials within the Federal Communications Commission by the Executive Director.